S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 17, 2013

Introduced by M. of A. WEISENBERG, GALEF, McKEVITT, MILLER, COLTON, COOK, ZEBROWSKI, ROSENTHAL, JAFFEE, HOOPER, OTIS, SCHIMEL, WEINSTEIN -- Multi-Sponsored by -- M. of A. DINOWITZ, DUPREY, GOTTFRIED, HIKIND, JACOBS, McDONALD, ROBINSON, SWEENEY, TITONE -- read once and referred to the Committee on Consumer Affairs and Protection -- ordered to a third reading -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading -- repassed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the general business law, in relation to requiring sunscreen products to be labeled with a best if used before date; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 399-j to read as follows:

S 399-J. DATE LABELING OF SUNSCREEN PRODUCTS. 1. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY TO MANUFACTURE, FOR SALE, RESALE, OR DISTRIBUTION IN THIS STATE, SUNSCREEN WHICH DOES NOT CONTAIN A LABEL INDICATING A DATE ON WHICH THE PRODUCT IS BEST IF USED BEFORE. THE DATE REQUIRED BY THIS SECTION SHALL BE LABELED BY MONTH AND YEAR.

2. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY SHALL SELL SUNSCREEN WHICH IT KNOWS DOES NOT CONTAIN THE LABELING INFORMATION REQUIRED BY SUBDIVISION ONE OF THIS SECTION.

3. FOR PURPOSES OF THIS SECTION, SUNSCREEN SHALL MEAN A TOPICAL, NON-DOSAGE PRODUCT INTENDED FOR USE STRICTLY AS A HUMAN OTC DRUG PRODUCT, AND NOT ALSO A COSMETIC PRODUCT, AND LABELED WITH THE TERM "SPF" AND

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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LABELED SOLELY FOR USE IN SUNBURN PROTECTION, AND CONTAINING AT LEAST ONE ACTIVE INGREDIENT LISTED IN 21 C.F.R. 352.10 THAT ABSORBS, REFLECTS OR SCATTERS RADIATION. FOR PURPOSES OF THIS SECTION "SUNSCREEN" SHALL NOT INCLUDE PRODUCTS IN WHICH AVAILABLE EMPIRICAL TESTING DEMONSTRATES THAT THE SUNSCREEN PRODUCT MAINTAINS ITS INTEGRITY AND EFFECTIVENESS FOR A PERIOD OF AT LEAST THREE YEARS.

4. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR EACH SUCH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. ANY MONETARY PENALTIES THAT ARE SECURED BY THE STATE SHALL BE UTILIZED BY THE DEPARTMENT OF HEALTH FOR SUNSCREEN EDUCATION PROGRAMS.

S 2. This act shall take effect two years after it shall have become a law; provided that it shall be repealed upon the adoption by the United States Food and Drug Administration of a final OTC drug monograph for sunscreen products; provided that the commissioner of health shall notify the legislative bill drafting commission upon the occurrence of the adoption of a final OTC drug monograph for sunscreen products provided for in this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.